



U.S. Citizenship
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FILE: EAC 01 092 53025 Office: VERMONT SERVICE CENTER

Date: AUG 11 2004

IN RE: Petitioner:
Beneficiary:

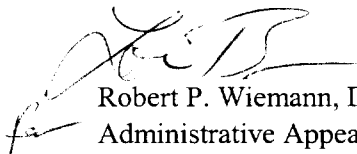
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an individual. She is seeking permanent employment in the United States as a certified nursing assistant/registered nurse. Although the petitioner/beneficiary did not assert that she qualifies for a blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I, she also did not submit an Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140).

On September 24, 2001, the director issued an Intent to Deny informing the petitioner/beneficiary of the following:

The regulation at 8 C.F.R. § 204.5(c) states in pertinent part:

Filing petition. Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

Since the petitioner/beneficiary does not appear to be sponsored by an employer, she is not eligible to file a petition on her on behalf.

In the Intent to Deny, the director also requested that the petitioner/beneficiary provide a labor certification or evidence that she meets the requirements set forth in 22 C.F.R. § 656.22(C)(2), that she provide an evaluation of her education credentials, and that she provide evidence that the sponsor (if she has one) has the ability to pay the proffered wage from the time of filing of the petition and continuing to the present.

The petitioner/beneficiary was informed that a final decision would not be made for thirty days and that during that time, she could submit any evidence that she felt would overcome the director's reasons for the denial. If no response were received in that time, the petition would be denied.

The director determined that the petitioner/beneficiary had not responded to his intent to deny and request for evidence, and, on March 1, 2002, denied the petition.

On appeal, the self-petitioner makes a statement and provides additional evidence.

The regulation at 8 C.F.R. § 103.2(b)(15) states, in pertinent part: "A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5." In addition, prior to March 1, 2003, 8 C.F.R. § 103.1(f)(2)(iii)(B) provided that the AAO had jurisdiction over employment based visa petitions filed under 8 C.F.R. § 204.5 "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor." Currently, the AAO still exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003).

Therefore, this office has no jurisdiction over the instant appeal. Rather, the regulation at 8 C.F.R. §103.5(a)(2) provides that denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision based on limited arguments. The notice of denial erroneously stated that the petitioner could file an appeal within 33 days. Nevertheless, the director's error does not supersede the pertinent regulations.

Since the petition was denied due to abandonment for failure to respond to a notice of intent to deny based, in part, on the lack of a labor certification, the appeal must be rejected.

ORDER: The appeal is rejected.